

IC63MELS

Sentence

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

17 CR 647 (NRB)

5 ALEXANDER MELO,

6 Defendant.

7 -----x

8 New York, N.Y.
9 October 6, 2018
4:00 p.m.

10 Before:

11 HON. NAOMI REICE BUCHWALD,

12 District Judge

13
14 APPEARANCES

15 GEOFFREY S. BERMAN

16 United States Attorney for the
Southern District of New York

17 HAGAN C. SCOTTEN

Assistant United States Attorney

18 RICHARD H. ROSENBERG

19 Attorney for Defendant

IC63MELS

Sentence

1 THE DEPUTY CLERK: This is 17 CR 647, United States v.
2 Alexander Melo. Is the government present and ready to
3 proceed?

4 MR. SCOTTEN: We are. Good afternoon, your Honor.
5 Hagan Scotten for the government.

6 THE DEPUTY CLERK: Is the defendant present and ready
7 to proceed?

8 MR. ROSENBERG: Yes, your Honor. Richard Rosenberg
9 for Alexander Melo.

10 THE COURT: This sentencing was originally scheduled
11 for November 20, and we did get together on November 20. At
12 that time, it became clear to at least the Court for the first
13 time that the defendant's sentencing request was not for a
14 guideline sentence within the range that would be applicable in
15 the absence of career offender status. But rather, that the
16 defendant was essentially asking for no further jail time, and
17 a sentence of inpatient drug treatment.

18 Is that a fair summary of what happened the last time?

19 MR. ROSENBERG: Yes, your Honor.

20 THE COURT: So, I think in light of that, it was my
21 suggestion that we adjourn to give me some chance to think
22 through this case a second time. And also to give me a chance
23 to speak to the probation officer and see what insight she
24 might have.

25 So, I did both those things. Let me just, before I go

IC63MELS

Sentence

1 on, let me give both parties a chance to say anything else that
2 they would like to.

3 I will say, in reviewing what happened the last time,
4 I think that the government, defense, and the Court were all on
5 the same page that career offender status was inappropriate as
6 a basis for sentencing in this case. Even though, as a matter
7 of pure guidelines analysis, it applied. So, we had put that
8 off to some sort of back burner.

9 Okay, so let me just let counsel speak if there are
10 any thoughts you've had since the last time.

11 MR. ROSENBERG: Well, your Honor, I did try, I did
12 reach out to a program, I got in touch with Federal Defenders
13 for their recommendations of programs, they gave me two:
14 Educational Alliance and Samaritan. I contacted the
15 Educational Alliance people, I spoke to a Mr. Ford who is the
16 director of inpatient intake, and yes, they do have programs,
17 they have a contract with Southern District probation. But
18 they needed to speak to probation because they have to have
19 some kind of assurance that they'll be paid to investigate or
20 to interview and to evaluate.

21 So, I did try to get in touch with the probation
22 officer by phone and by e-mail. And left the contact --

23 THE COURT: She was on vacation.

24 MR. ROSENBERG: I understand.

25 THE COURT: As it turned out.

IC63MELS

Sentence

1 MR. ROSENBERG: As it turns out, I couldn't go any
2 further with setting up any fixed proposal or come in and say,
3 well, here is a program that's willing to take him, because I
4 didn't have the authority to represent that they would be hired
5 by probation if in fact Mr. Melo qualified.

6 I'm sorry that my memo wasn't more clear. I guess I
7 was too subtle, your Honor. But, yes, it is still our fervent
8 hope and wish that Mr. Melo receives or an opportunity to
9 receive the treatment that he desperately wants and he so
10 desperately needs.

11 I know your Honor has given this thought and has heard
12 the arguments and read the papers, so I don't want to belabor
13 things, but I just wanted the Court to know that I did try to
14 come in here today, or whatever day we were going to convene
15 with some proposal that was at least put on the table anyway.
16 I'm sorry I don't have that.

17 THE COURT: That's fine.

18 Mr. Scotten, I'm not insisting that you say anything.
19 I just wanted to give everybody a chance.

20 MR. SCOTTEN: Sure. So I think you have our
21 submission from last time. Unless the Court has any questions,
22 our position is, generally, we agree the guidelines are far too
23 high. Not sure that a time served sentence is appropriate
24 given the defendant has been in jail 17 months and has
25 previously had sentences around this area, yet recidivated. On

IC63MELS

Sentence

1 the other hand, his acceptance of responsibility in this case
2 is as complete as I've ever seen of any defendant, so I'm not
3 here to pound the table and suggest that significantly more
4 incarceration is necessary either.

5 MR. ROSENBERG: And Mrs. Melo is in court again. I'm
6 sorry for not pointing that out.

7 THE COURT: All right. I believe everyone hopes that
8 inpatient drug treatment will work. It remains simply that:
9 It's a hope. And against that hope, is a history of six prior
10 sentences involving drugs, none of which sufficiently, shall we
11 say, scared the defendant to changing his ways or really trying
12 to get the help that he needs. So, the Court needs to balance
13 the criminal history and the need for drug treatment in order
14 to arrive at a just sentence which considers all of the 3553(a)
15 factors.

16 Having considered the defendant's prior sentences, and
17 his avowed intention to break the cycle, the Court has
18 concluded that a sentence of 24 months is appropriate. And
19 further, the defendant will be placed on supervised release for
20 three years. There is a \$100 special assessment.

21 And I am going to make it a recommendation that he
22 receive inpatient treatment as well as imposing all the
23 mandatory, standard, and other special conditions as set out in
24 the presentence report.

25 I just don't recall, as I say, I've been on trial so

IC63MELS

Sentence

1 I've not been focused. Are there any open counts in this case?

2 MR. SCOTTEN: From an abundance of caution, I think it
3 is a single-count indictment, but we'll move to dismiss any
4 open counts.

5 THE COURT: So ordered. And again, if the plea
6 agreement hasn't waived the right to appeal the sentence,
7 Mr. Melo is advised he has 14 days to do so.

8 Is there anything else at this time? Mr. Melo.

9 THE DEFENDANT: Yes, ma'am. Good evening. Thank you,
10 ma'am. At this point in my life --

11 THE COURT: By the way, just understand something.
12 You've already served 17 months of the 24, and I know you had a
13 incident in prison when you were disciplined, so I'm not
14 100 percent sure whether you'll get all the good time credit.
15 But, essentially going forward it is an additional short period
16 of time. I just want you to understand that.

17 THE DEFENDANT: It was, it wasn't no good time taken,
18 it wasn't serious. I was placed in SHU for 30 days. That was
19 the day I got the plea deal, the 151 to 188, so I went through
20 a little rough that day, I didn't know how to cope with that. I
21 didn't know, even though Mr. Rosenberg was telling me they
22 weren't mandatory. It was just still something I couldn't
23 inhale. But, your Honor, thank you.

24 THE COURT: That's an interesting word.

25 THE DEFENDANT: I think the only time you'll see me

IC63MELS

Sentence

1 back in any courtroom is for me asking for permission to travel
2 or if, God forbid, me and my probation officer come to an
3 disagreement.

4 THE COURT: Listen.

5 THE DEFENDANT: To ask for your permission.

6 THE COURT: Here's the way it goes. You think of that
7 probation officer as it's me.

8 THE DEFENDANT: Understood.

9 THE COURT: You do what they say.

10 THE DEFENDANT: Understood.

11 THE COURT: Nothing is the subject of discussion.
12 Mr. Rosenberg has really gone above and beyond --

13 THE DEFENDANT: Understood, ma'am.

14 THE COURT: -- arguing for you. And there comes a
15 point in everyone's life where the chances come to an end.
16 You're at that point.

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: And you need to -- that's an internal
19 commitment. Your mom can't do it for you, Mr. Rosenberg can't
20 do it for you. You make a choice now.

21 THE DEFENDANT: You're absolutely right, your Honor.

22 THE COURT: For someone who is a little older than
23 you, you have a huge amount of life in front of you, and it's
24 not all over by any stretch of the imagination. But, you need
25 to say to yourself, I'm done with that life, I'm going on. No

IC63MELS

Sentence

1 drugs. I'm going to become addicted to chocolate ice cream or
2 whatever it is that you like.

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: All right?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: It doesn't matter to me. Pick any flavor
7 you like.

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: And that's what I'm going to be, you know,
10 when I'm getting upset. I am going to my favorite candy or my
11 favorite ice cream. Whatever it is, as long as it's legal.

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Your choice.

14 One other thing I wanted to say to you. Don't set
15 your goals for yourself too high.

16 THE DEFENDANT: Understood, ma'am.

17 THE COURT: Because if you do, you're going to fail
18 and then you are going to feel crappy. So, you know that
19 expression about taking it day by day and baby steps? You
20 know, you can hold down the simplest job. That's good. You
21 don't have to create a whole business. You know, it's okay to
22 shelve groceries in a supermarket. It's okay to work at
23 McDonald's. If you start out and you work 30 hours a week,
24 fantastic. If you can then build up to more hours or you start
25 out at 20 hours, doing all those things, they call them baby

IC63MELS

Sentence

1 steps.

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Focus on baby steps, not giant steps,
4 because that's not the way things work. I didn't start out,
5 you know, getting out of law school and say, well, I'm going to
6 become a federal judge. You know, it's step by step, all
7 right.

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: So you do the same thing. Okay? If you
10 do it in little steps every day, you'll feel good about
11 yourself. Every day you feel good about yourself will make the
12 next day easier. If you start out with huge goals, you're
13 going to feel crappy, and when you feel crappy, you are
14 inclined to go use an illegal substance. Okay?

15 THE DEFENDANT: Yes, ma'am. Thank you ma'am.

16 MR. SCOTTEN: Thank you, your Honor.

17 MR. ROSENBERG: So, your Honor, the recommendation
18 will be part of supervised release for inpatient?

19 THE COURT: Yes. Yes.

20 MR. ROSENBERG: So probation will decide?

21 THE COURT: And they'll figure it out.

22 MR. ROSENBERG: They'll figure it out. That's great.
23 Thank you very, very much, your Honor, for your understanding
24 and your compassion. Thank you.

25 (Adjourned)